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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 ME2 PRODUCTIONS, INC.,

Case No. 2:17-CV-126 JCM (NJK)

8 Plaintiff(s),

ORDER

9 v.

10 SHANNON SOISOONGNOEN, et al.,

11 Defendant(s).

12
13 Presently before the court is plaintiff's first motion for default judgment against defendant
14 Shannon Soisoongnoen.¹ (ECF No. 39).

15 Also before the court is plaintiff's second motion for default judgment against defendant
16 Shannon Soisoongnoen. (ECF No. 35).

17 **I. Facts**

18 This is one of several similar cases originally filed by plaintiff against numerous
19 unidentified doe defendants for infringing its copyright in the film "Mechanic 2: Resurrection" by
20 using BitTorrent software. For a more detailed explanation of the background to these cases, *see*
21 *ME2 Productions, Inc. v. Bayu*, no 2:17-cv-00724-JCM-NJK, 2017 WL 5165487 (D. Nev. Nov.
22 7, 2017).

23 On November 7, 2017, the court adopted in part Magistrate Judge Koppe's report and
24 recommendation that all but the first-named plaintiff be severed and dismissed from the case,
25 thereby dismissing all defendants except for defendant Soisoongnoen. (ECF No. 40). On August
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27 ¹ Plaintiff named three other defendants in addition to Shannon Soisoongnoen in its
28 motions. As explained more fully below, because the court adopted Magistrate Judge Koppe's
recommendation to dismiss all defendants except for Shannon Soisoongnoen, the court will ignore
plaintiff's request for default judgment against these additional defendants.

1 7, 2017, Plaintiff brought its motion for default judgment against defendant Soisoongnoen, who is
2 yet to appear in this action. (ECF Nos. 35).

3 On October 2, 2017, plaintiff filed a subsequent motion for default judgment that includes
4 an updated attorney's fee amount. (ECF No. 39). Otherwise, the second motion for default
5 judgment is identical to the first motion filed on August 7, 2017 (ECF No. 35).

6 **II. Legal Standard**

7 Obtaining a default judgment is a two-step process. *Eitel v. McCool*, 782 F.2d 1470, 1471
8 (9th Cir. 1986). First, "[w]hen a party against whom a judgment for affirmative relief is sought
9 has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the
10 clerk must enter the party's default." Fed. R. Civ. P. 55(a). Federal Rule of Civil Procedure
11 55(b)(2) provides that "a court may enter a default judgment after the party seeking default applies
12 to the clerk of the court as required by subsection (a) of this rule."

13 The choice whether to enter a default judgment lies within the discretion of the court.
14 *Aldabe v. Aldabe*, 616 F.3d 1089, 1092 (9th Cir. 1980). In the determination of whether to grant
15 a default judgment, the court should consider the seven factors set forth in *Eitel*: (1) the possibility
16 of prejudice to plaintiff if default judgment is not entered; (2) the merits of the claims; (3) the
17 sufficiency of the complaint; (4) the amount of money at stake; (5) the possibility of a dispute
18 concerning material facts; (6) whether default was due to excusable neglect; and (7) the policy
19 favoring a decision on the merits. 782 F.2d at 1471–72. In applying the *Eitel* factors, "the factual
20 allegations of the complaint, except those relating to the amount of damages, will be taken as true."
21 *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977); *see also* Fed. R. Civ. P. 8(d).

22 **III. Discussion**

23 As an initial matter, the court will deny plaintiff's initial motion for default judgment as
24 moot (ECF No. 35), as plaintiff filed a subsequent motion for default judgment (ECF No. 39) that
25 is identical to first, except for an updated attorney's fee figure.

26 Additionally, while plaintiff's motions request the court enter default judgment against
27 defendants Shannon Soisoongnoen, John Schwarz, Karin Fee, and Edgar Lozano Paez, Magistrate
28 Judge Koppe recommended dismissal of all defendants except for Shannon Soisoongnoen. (ECF

1 No. 23). As this court adopted Magistrate Judge Koppe's report and recommendation (ECF No.
2 40) subsequent to plaintiff's filings on November 7, 2017, the court will ignore the inclusion of
3 John Schwarz, Karin Fee, and Edgar Lozano Paez by plaintiff in the instant motion. This order
4 applies to Shannon Soisoongnoen only.

5 Plaintiff requests the court enter default judgment against defendant as follows: \$15,000 in
6 statutory damages; a permanent injunction against defendant; and attorney's fees and costs in the
7 amount of \$5,470. (ECF No. 39).

8 On August 4, 2017, plaintiff filed a motion for entry of clerk's default as to defendant
9 Soisoongnoen (ECF No. 32), and the clerk subsequently entered default on August 7, 2017, (ECF
10 No. 33). Therefore, plaintiff has satisfied subsection (a) of Federal Rule of Civil Procedure 55.

11 The first *Eitel* factor weighs in favor of default judgment in this case. Defendant has failed
12 to respond or appear in the case, which prejudices plaintiff's ability to pursue its claims on the
13 merits and seek recovery of damages. *See PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172,
14 1177 (C.D. Cal 2002) ("Potential prejudice to Plaintiffs favors granting a default judgment. If
15 Plaintiffs' motion for default judgment is not granted, Plaintiffs will likely be without other
16 recourse for recovery.").

17 The second and third *Eitel* factors favor plaintiff in this case. Plaintiff's complaint
18 adequately alleges plaintiff's copyright infringement claims. *See Eitel*, 782 F.2d at 1471.

19 The fourth *Eitel* factor, which compares the amount of money at stake to the seriousness
20 of defendant's conduct, supports a default judgment in favor of plaintiff. "If the sum of money at
21 issue is reasonably proportionate to the harm caused by the defendant's actions, then default
22 judgment is warranted." *Landstar Ranger, Inc. v. Parth Enter., Inc.*, 725 F. Supp. 2d 916, 921
23 (N.D. Cal. 2010).

24 For statutory damages, plaintiff requests \$15,000 under 17 U.S.C. § 504(c). The statute
25 sets a \$750 minimum and \$30,000 maximum award for damages in copyright infringement cases.
26 17 U.S.C. § 504(c)(1). The maximum increases to \$150,000 when the infringement was willful.
27 17 U.S.C. § 504(c)(2). Courts have "wide discretion in determining the amount of statutory
28 damages to be awarded, constrained only by the specified maxima and minima." *Peer Int'l Corp.*

1 *v. Pausa Records, Inc.*, 909 F.2d 1332, 1336 (9th Cir. 1990) (quoting *Harris v. Emus Records*
2 *Corp.*, 738 F.2d 1329, 1335 (9th Cir. 1984)).

3 Given defendant's numerous opportunities to respond to plaintiff's demand letters or
4 otherwise appear in the action, coupled with plaintiff's unopposed allegations that the court takes
5 as true, the court holds defendant willfully infringed on plaintiff's copyright. However, similarly
6 to another court in this district,² the court holds that an award of \$15,000 would severely
7 overcompensate plaintiff and unduly punish defendant for the conduct at issue here. The court
8 will exercise its discretion and award statutory damages in the amount of \$1,500. *See Peer*, 909
9 F.2d at 1336. This award will adequately protect plaintiff's copyrights without constituting
10 excessive punishment. *See LHF Productions, Inc. v. Buenafe*, no. 2:16-cv-01804-JAD-NJK, 2017
11 WL 4797523, at *4 (D. Nev. Oct. 24, 2017).

12 The Copyright Act allows courts to award the recovery of full costs and reasonable
13 attorney's fees to the prevailing party. 17 U.S.C. § 505. Plaintiff moves for \$4,750³ in attorney's
14 fees and \$720 in costs, for a total of \$5,470.

15 Therefore, the total sum of money at stake is \$6,970. Thus, the fourth factor favors an
16 entry of default judgment. *See Eitel*, 782 F.2d at 1471.

17 The fifth *Eitel* factor, the possibility of a dispute concerning material facts, favors plaintiff.
18 Here, there is no dispute concerning the material facts of the case. Plaintiff has adequately pleaded
19 copyright infringement claims. Further, "[o]nce the clerk enters a default, the well-pleaded factual
20 allegations of the complaint are taken as true, except for those allegations relating to damages."
21 *O'Brien v. United States of America*, no 2:07-cv-00986-GMN-GWF, 2010 WL 3636171, at *1 (D.
22 Nev. Sept. 9, 2010). Therefore, the court must accept all well-pleaded factual allegations in
23 plaintiff's complaint as true. Considering the well-pleaded factual allegations, there are no
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26 ² In *LHF Productions, Inc. v. Buenafe*, no. 2:16-cv-01804-JAD-NJK, 2017 WL 4797523
27 (D. Nev. Oct. 24, 2017), Judge Dorsey awarded plaintiff \$1,500 in statutory damages on a legally
28 identical fact pattern.

³ Plaintiff used a lodestar calculation of \$375 an hour multiplied by 12.67 hours reasonably
spent litigating this case.

1 disputes of material fact regarding defendant's infringing conduct. Accordingly, the fifth *Eitel*
2 factor favors plaintiff. *See Eitel*, 782 F.2d at 1471–72.

3 The sixth *Eitel* factor considers excusable neglect. 782 F.2d at 1472. The factor favors
4 entry of default judgment when the defendant has been properly served or plaintiff shows that
5 defendant is aware of the lawsuit and failed to answer. *Meadows v. Dominican Republic*, 817 F.2d
6 517, 521 (9th Cir. 1987). Here, plaintiff properly served defendant, who has failed to answer or
7 otherwise appear. Accordingly, the court holds that plaintiff has demonstrated defendant's failure
8 to appear is not the result of excusable neglect. *See id.* The sixth *Eitel* factor favors default
9 judgment in this case. *See Eitel*, 782 F.2d at 1472.

10 The seventh *Eitel* factor considers the strong policy favoring case disposition on the merits.
11 *Id.* While public policy generally favors disposition on the merits, default judgment is proper
12 when a defendant deliberately chooses not to defend the case. *PepsiCo, Inc.*, 238 F. Supp. 2d at
13 1177. Defendant's conduct in this case has made it impractical, if not impossible, to adjudicate
14 this case on the merits. Accordingly, default judgment is appropriate. *See Eitel*, 782 F.2d at 1472;
15 *PepsiCo, Inc.*, 238 F. Supp. 2d at 1177.

16 After considering the foregoing, the court finds good cause to grant plaintiff's motion for
17 default judgment. Moreover, plaintiff has properly complied with Rule 55. Therefore, the court
18 will grant plaintiff's motion for default judgment.

19 Plaintiff requests a permanent injunction against defendant "enjoining [her] from directly
20 or indirectly infringing Plaintiff's rights as to the Plaintiff's motion picture, including without
21 limitation using the Internet to reproduce, to distribute, to copy, or to publish the motion picture."
22 (ECF No. 39 at 14).

23 The Copyright Act allows courts to "grant temporary and final injunctions on such terms
24 as it may deem reasonable to prevent or restrain infringement of a copyright." 17 U.S.C. § 502(a).
25 The Supreme Court held in *eBay Inc. v. MercExchange, L.L.C.* that a plaintiff must satisfy a four-
26 factor test to receive a permanent injunction in a patent-infringement case. 547 U.S. 388, 391
27 (2006). Plaintiff must demonstrate: "(1) that it has suffered an irreparable injury; (2) that remedies
28 available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that,

1 considering the balance of hardships between the plaintiff and defendant, a remedy in equity is
2 warranted; and (4) that the public interest would not be disserved by a permanent injunction.” *Id.*
3 This test also applies to copyright-infringement cases. *Flexible Lifeline Systems, Inc. v. Precision*
4 *Lift, Inc.*, 654 F.3d 989, 995–96 (9th Cir. 2011).

5 Plaintiff argues that “[m]onetary damages alone are simply inadequate” because “absent
6 injunctive relief to force the deletion of each torrent file from the Defendants’ computers ...
7 infringement will continue unabated in exponential fashion.” (ECF No. 39 at 12). The court holds
8 that the monetary judgment in this case is sufficient to compensate plaintiff for any infringement
9 injury and likely to sufficiently deter defendant from infringing plaintiff’s copyright, so plaintiff
10 fails to satisfy the second factor of the permanent-injunction test. *See MercExchange*, 547 U.S. at
11 391. Accordingly, the court will deny plaintiff’s request for injunctive relief.

12 **IV. Conclusion**

13 The court will grant default judgment against defendant Soisoongnoen.

14 Accordingly,

15 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that plaintiff’s motion for
16 default judgment (ECF No. 39) be, and the same hereby is, GRANTED in part and DENIED in
17 part, consistent with the foregoing.

18 IT IS FURTHER ORDERED that plaintiff’s motion for default judgment (ECF No. 35)
19 be, and the same hereby is, DENIED as moot.

20 IT IS FURTHER ORDERED that plaintiff shall prepare and file an appropriate judgment
21 for the court’s signature consistent with the foregoing within twenty-one (21) days of the entry of
22 this order.

23 DATED March 26, 2018.

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UNITED STATES DISTRICT JUDGE